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U.S. Citizenship
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Services

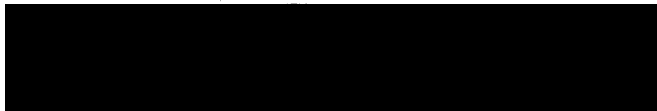


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FILE: LIN 04 005 54010 Office: NEBRASKA SERVICE CENTER

Date: JUL 26 2004

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides outpatient rehabilitation services. It seeks to employ the beneficiary as a physical therapist.¹ The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform a specialty occupation. On appeal, the petitioner submits a brief.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

¹ 8 C.F.R. § 103.2(a)(3) specifies that a petitioner may be represented "by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." In this case, the person listed on the G-28 is not an authorized representative.

The petitioner is seeking the beneficiary's services as a physical therapist. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in physical therapy.

The director found that the beneficiary was not qualified for the proffered position because the petitioner had not submitted evidence demonstrating that the beneficiary holds a permanent or temporary license to practice physical therapy in the State of Michigan. The director further found that the petitioner had not submitted evidence from the State of Michigan indicating that a license is not required and that the beneficiary can perform services under the supervision of a licensed physical therapist, or that the beneficiary has an application pending with the State of Michigan, Board of Physical Therapy.

On appeal, the petitioner resubmits an excerpt from the Public Health Code of the State of Michigan, which, according to the petitioner, indicates that the beneficiary is authorized to perform as a physical therapist under the direct supervision of a licensed physical therapist. The petitioner further states that the beneficiary will perform her duties as a physical therapist under the direct supervision of the petitioner's employee, Giovanni Joseph T. Mallabo, RPT.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in physical therapy and state licensing. In its *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the Department of Labor finds that all states require physical therapists to pass a licensure exam before they can practice, after graduating from an accredited physical therapist educational program.

The State of Michigan's Public Health Code (Excerpt), Act 368 of 1978, § 333.17820, Section 17820, provides that:

A person shall not engage in the practice of physical therapy unless licensed or otherwise authorized by this article. A person shall engage in the actual treatment of an individual only upon the prescription of an individual holding a license, other than a subfield license, issued under part 166, 170, 175, or 180, or the equivalent license issued by another state.

The record contains a Physical Therapist License for [REDACTED]. The record, however, does not contain any independent evidence from the State of Michigan's licensing authority that, based on the beneficiary's foreign degree in physical therapy, she is eligible to practice as a physical therapist under this section of Michigan's Public Health Code. Nor is there any information in the record, either from the petitioner or from [REDACTED] establishing that he is an employee of the petitioner, and explaining the conditions under which he will directly supervise the beneficiary. In fact, Citizenship and Immigration Services (CIS) records reveal that since 1999, [REDACTED] has been the employee of an entirely separate entity with a different employer identification number that is located at a different address. The record contains no explanation of this contradictory information. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by the petitioner are not sufficient to enable the AAO to determine whether the other H-1B petitions were parallel to the proffered position. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.